

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) Case No. CR-12-297-R
) CIV-16-495-R
)
REFUGIO RODRIGUEZ,)
)
Defendant.)

ORDER

Petitioner Refugio Rodriguez has filed a Motion to Vacate under 28 U.S.C. § 2255 on the grounds that his sentence is invalid under the Supreme Court's decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015), which struck down the Armed Career Criminal Act's residual clause as unconstitutionally vague.

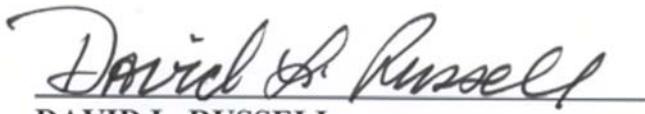
Because Petitioner was not sentenced under the Armed Career Criminal Act, his sentence is unaffected by *Johnson*. After Petitioner pled guilty to possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(b)(1)(B), the Court sentenced him to 120 months' imprisonment. In imposing this sentence, the Court adopted the presentence report's finding that Petitioner qualified as a career offender under USSG § 4B1.1 [Doc. 732]. Because the Sentencing Guidelines are not subject to void-for-vagueness challenges under the Due Process Clause per the Supreme Court's recent decision in *Beckles v. United States*, 137 S. Ct. 886, 890 (2017), Petitioner's Motion is DENIED.

Further, the Court denies Petitioner a Certificate of Appealability (COA) under Rule 11(a) of the Rules Governing Section 2255 Cases in the United States District Courts.

When a court denies a habeas petition on the merits, a petitioner is entitled to a COA only if he demonstrates “that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S.Ct. 1029 (2003). Given that the Supreme Court has expressly foreclosed challenges to the Guidelines such as Petitioner’s, Petitioner has not made this showing and is thus not entitled to a COA. He may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22 if he wishes to appeal the Court’s ruling on his motion.

In conclusion, Petitioner’s motion under 28 U.S.C. § 2255 is DENIED and DISMISSED WITH PREJUDICE because it lacks merit.

IT IS SO ORDERED this 1st day of May 2017.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE